

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
	Dudley Davis - Forwarded by University of California Cooperative Extension	11/11/04	<p>My first comment is about pesticide application via irrigation. It flat out makes no sense. It would very difficult for a nursery to comply because at least half of our pesticide use is for foliar disease prevention or cure. I just don't understand.</p> <p>The wavier is lengthy and complicated and hard to understand. Storm discharge is very vague regarding amount that can be released and a date for compliance. There are quantities of certain elements listed that are permissible to be present in a discharge but that's a small part of what may be in the runoff from any ag land here. Will this be a case where they continually raise the bar?</p>	<p>Agree, pesticide application may follow Integrated Pest Management Guidelines without being an irrigation application and still support water quality and the waiver, if fully documented.</p> <p>Storm water controls are on quality, not quantity. If additional pollutants are identified, they may also require monitoring.</p>
	Tom Bellamore – California Avocado Commission	11/11/04	<p>The Board's revised draft conditional waiver program generally resembles those developed by the Central Valley and Central Coast Regional Boards, at least with respect to the broad areas it addresses. It departs, however, from those other programs by calling for a much greater number of monitoring points and the inclusion of parameters to be monitored that may not be related to listed water quality impairments, especially as they apply to individual streams. To the Commission, it appears that the scope of monitoring being sought is not justified given the extent of documented water quality impairments.</p>	<p>This point has been carefully considered. The estimated number of impairments for NPS and agriculture in Region 4 is 322, compared to 63 for Region 4 and 68 for Region 5. The severity and scope of the problem justifies a more thorough monitoring program, which may resemble the final monitoring program defined by the Waiver process in Region 4 and Region 5 where the discovery of problems will result in additional monitoring.</p>

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			In certain areas within the Board' s jurisdiction, agriculture represents a minority land-use and a clearly discernable, non-irrigated land contributing source can be identified. It appears, however, that the revised draft conditional waiver would require growers so situated to bear the entire cost of monitoring. Where multiple dischargers are present, the Commission recommends the adoption of an approach like that utilized by the San Diego Regional Board to monitor Rainbow Creek (see the recently released draft Rainbow Creek TMDL for nutrients). Recognizing that Rainbow Creek receives discharges from a number of sources, including irrigated agriculture, the San Diego Regional Board designated the County of San Diego as the entity principally responsible for monitoring. The Board should consider a similar approach in areas where irrigated agriculture is not the sole potential source of pollutant loadings.	Other potential sources of runoff pollution in urban areas are already monitoring and regulated. Specifically, the MS-4 storm water permit makes these municipalities responsible for non-agricultural runoff problems. The Waiver provides monitoring to demonstrate agricultural impacts alone.
			The generic monitoring and compliance point locations shown in the “Individual” and “Group Discharger Scheme” figures, if strictly followed, appear to place an unnecessary burden on growers. Monitoring points are shown below the group or individual dischargers. The grower at the lowest point in the watershed, therefore, may be forced to mitigate water quality impairments for which they may not be responsible. For example, if an adjacent non-regulated land-use or an upstream discharger is actually responsible	In response to growers’ comments, monitoring at the upstream end of a property was not required. However, growers who may be receiving water that with constituents that exceed the receiving water limits of this waiver may monitor incoming incoming water quality to document the effectiveness of management measures.

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			for a water quality violation, and monitoring at the grower' s downstream location indicates that tolerances are exceeded, the Board may unfairly conclude that the grower is fully responsible for the problem and its mitigation.	
			The Santa Clara River receives significant discharges from two publicly owned sewage treatment facilities operated by the Los Angeles County Sanitation Districts. Other surface waters within the Board' s jurisdiction are similarly impacted. The Board recognizes that these discharges constitute a substantial flow and, in some instances, has characterized these waters as being effluent dominated. The combined outflow of treatment plants that discharge to surface waters in the region dramatically alters natural hydrologic conditions and significantly influence water quality miles from the point of release. Given this degree of influence on water quality, the monitoring programs for these facilities should be modified to collect data, which complements that being sought under the conditional waiver.	Agree, Regional Board staff are currently attempting to coordinate TMDL monitoring programs with this conditional waiver.

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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.			<p><b>Ensure monitoring requirement are reasonable, justified, and understandable</b></p> <p>The revised draft conditional waiver states that individual and group dischargers should develop and follow rigorous monitoring programs and Quality Assurance Project Plans (QAPP). Such documentation is complex and costly to prepare for most growers. The Commission recommends allowing individual or group dischargers to utilize existing, generic monitoring plans or QAPPs. For example, a QAPP has been developed for compliance with the Central Coast Regional Board's Conditional Waiver for Irrigated Agriculture. The ability to use this document or something similar to comply with the Board' s QAPP requirement would greatly benefit growers.</p>	<p>Agree joint QAPP plans may be developed if there is not a loss of quality.</p>

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

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			<p>The Board' s revised draft proposes monitoring on over 90 specific drainages. As a result, the proposed number of sampling sites is considerably greater than that required by the Central Coast Regional Board's conditional waiver despite the larger land area under that Board' s jurisdiction<sup>1</sup>. These broad differences aside, the Commission believes that when adopting a conditional waiver, the Board must initially focus on monitoring those waters known to be impaired by irrigated lands. If monitoring for other drainages is to be mandatory, then the Board should explain or justify their inclusion (e.g. 303d listed waters) and require less frequent monitoring if irrigated agriculture is not the primary contributing source of contaminants. The Central Coast Regional Board is phasing-in monitoring requirements during the first year by not requiring monitoring at all identified sites. This recognizes the organizational and logistical difficulties that arise with the implementation of an entirely new program. A similar approach should be considered by the Board.</p>	<p>See comment above regarding coordination with TMDL monitoring plans. Additionally, groups can propose monitoring which aggregates monitoring sites that may be located closely to each other.</p>
			<p>The Commission favors the categorization of dischargers, and believes that many avocado growers will qualify as "low risk" operators. This is predominantly due to the fact that, generally speaking, the high efficiency irrigation of avocados yields no surface</p>	<p>Agree, a reduced monitoring program is provided for those who present sufficient evidence that they are "low risk."</p>

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<sup>1</sup> 39 drainages are identified in the Central Coast conditional waiver

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			runoff. The Board' s conditional waiver program should include a provision that allows growers to provide evidence that their routine operations do not generate such surface runoff. Once demonstrated, the grower should then be exempt from monitoring, with the exception of storm runoff.	
			The Commission is also concerned about sampling site locations, frequency, and events that trigger sampling. The revised draft conditional waiver states that "groups with discharges to receiving waters listed on Attachment A.2 shall sample the receiving waters no more than 50 feet downstream from the location where the discharge(s) enters the receiving water." This appears to imply that multiple sampling points could be required on each tributary. Further clarity is needed in the final document. For example, the Central Coast conditional waiver specifies that monitoring shall be conducted on "main stems of rivers and on tributaries entering the rivers." This approach allows for the conduct of upstream monitoring to confirm water quality problems. This is also consistent with the approach adopted by the Central Valley Regional Board in its conditional waiver	The location of the sampling point has been clarified in response to this and other similar comments.
			In the revised draft, Attachment A.1 indicates that a sample must be collected during the first storm event and four days later for wet weather. Similarly, for dry weather, two samples are required. Page	Agree, the requirement for sample number has been clarified.

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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			five of the Monitoring and Reporting Program, however, states ‘the discharge group receiving water-monitoring program will include one dry season and one wet season sample.’ This language conflicts with the language of Attachment A.1 and should be clarified.	
			The Board should also provide information on the sample testing protocol, sample type, and reporting limits in one table, similar to that which appears in the Central Coast conditional waiver Monitoring and Reporting Program.	Agree, this change has been made.
			<p><b>Provide ample time for formation of discharger groups and clarify their role</b></p> <p>The Commission favors that flexibility in the revised draft conditional waiver that allows for the formation of discharge groups. The experiences of the other Regional Boards, however, suggest that technical uncertainties will arise. Accordingly, the Commission recommends that the Board provide ample time for the establishment of discharge groups and the implementation of initial monitoring.</p> <p>The Board' s revised draft states ‘the discharge group shall only be responsible for conveying information related to an individual’s participation in the group, not for determining if the individual is in compliance with the terms of the waiver.’ This language is subsumed within a paragraph that principally deals with termination of coverage. There appears to be no specific section in the draft that addresses the legal status of a discharge group. It is suggested that a specific section be added clarifying that a discharge group is not a</p>	<p>Agree. In discussion with growers, 9 months was determined to be sufficient time to form groups after adoption.</p> <p>Agree, the discharger group is not responsible for the impairments or the management response, the individual growers remain responsible.</p> <p>A Discharger Group is not a ‘discharger’ as that term is defined in the Porter-Cologne Act. Further, the current draft of the order already makes clear that individual dischargers have responsibility for ensuring compliance with the substantive provisions of the order.</p>

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			discharger under the terms of the Porter Cologne Water Quality Act and is not directly liable for compliance with the provisions of the waiver.	Staff do not believe further clarification of the Discharger Group's status is necessary.
			<p><b>Reduce the burden of monitoring costs</b></p> <p>The Commission is also concerned about the cost for monitoring imposed by the conditional waiver. Monitoring costs may be unaffordable for some growers even if they are part of a discharge group. To provide growers with sufficient time to adjust to this new component of their cost structure and as part of its phased-in approach, the Central Coast Regional Board is using settlement funds to offset first year costs of monitoring. In the Central Valley, monitoring is initially being funded with a grant with the University of California, Davis. The Commission strongly urges the Board to explore every opportunity to provide a way to offset initial monitoring costs to lessen the burden on small growers. This will be particularly important to growers who may have no opportunity to join a discharge group or those forced to join small groups in which the individual's cost for monitoring is disproportionately high. One option may be to scale monitoring requirements based on the number of dischargers in a group.</p>	Monitoring costs are already offset by existing grants with United Water Conservation District and UC cooperative extension. Staff will consider to pursue methods to defray costs, but grower participation in those activities are key, as they are in the other Regions.
			<b>Equitably distribute the cost of sampling for</b>	Agree, the Calleguas watershed has the highest documented presence



# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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			<p><b>constituents no longer in use</b></p> <p>The Board has provided a comprehensive list of constituents for which sampling and analysis are to be conducted. The use of some of these constituents has long been prohibited by federal and state governments. Nonetheless, the Commission recognizes that the Board has a responsibility for addressing the impact of such contaminants, to the extent that they pose a threat to water quality.</p> <p>The Commission believes that potential "artifact" contaminants documented as being present throughout all or part of a specific watershed are the shared responsibility of the Board, local government, and individual landowners. Accordingly, costs associated with sampling and analyses for these specific compounds should not be borne by any one single group. In most instances, present landowners have no connection to the past application of chemicals now banned, such as DDT. The connection between the state and such chemical use is far less tenuous, since past applications were under the grant of the state' s regulatory authority. It is the state, and not the present landowner, therefore, that should appropriately bear the cost of monitoring and analyzing waters that these contaminants might impair.</p>	<p>of historic pesticides which may be related to agriculture and a TMDL is expected to be completed during the first year of the waiver which distributes the responsibility and monitoring requirements to the cities, municipal waste dischargers, urban dischargers and flood control districts.</p>

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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			<p><b>Adopt a tiered approach to regulatory compliance</b></p> <p>The Commission favors a tiered approach to compliance. For example, if a discharger's monitoring program identifies a water quality violation, additional monitoring may be appropriate to better characterize the extent of the problem and to determine the potential influence of other contributing sources.</p> <p>The Commission also favors the specific language in the Tentative Resolution that speaks to the Board' s expectations regarding compliance. This language clearly establishes the intent and expectations of the Board with respect to a discharger' s ability to comply with the provisions of the conditional waiver.</p>	<p>Agree, a tiered approach is already present, with increased monitoring where water quality problems are identified. Compliance with the conditional waiver is in accordance with the 2004 NPS implementation plan that favors a tiered approach.</p>
			<p><b>Develop options to comply with educational requirements, to encourage and facilitate participation</b></p> <p>The Board' s revised draft requires that each grower participate in an 8-hour training program on management practices. The goal of such a program, it is assumed, is to encourage growers to engage in such practices. The Commission has learned that the efficacy of force-feeding growers information of this type during an extended period of time is limited because, invariably, a point of diminishing return is reached before the 8-hour period is up.</p> <p>Alternatively, the Commission has had good success with shorter seminars and with internet-based educational programs. Online self-participation courses with built-in certification testing, live web casts and conferences, and half-day seminars are among the options available. The Board should also view the Commission' s extensive grower communications program as a resource for reaching those growers within its jurisdiction.</p>	<p>Staff appreciates the suggestions, which will be considered during the design of the educational program.</p>
	Ventura	11/09/04	We remain concerned with the Title 22 based receiving water limits	In general, the revised waiver limits the use of objectives derived from

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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	County Farm Bureau		contained in the resolution. We realize that these are undergoing review by your legal counsel and therefore we will provide no further comments at this time. We remain optimistic on being able to resolve this issue.	Title 22 of the California Code of Regulations solely to receiving waters specifically designated as a source of drinking water, and that do not have a * in the MUN column of Table 2-1 of the Basin Plan. Revision of water quality objectives are ongoing. Staff agrees that the Waiver may require revision in a hearing with the Regional Board should significant changes in a standard occur during the waiver period.
			<p><b>I. Changes in Monitoring Frequency</b></p> <p>We have reviewed the options outlined in your November 4, 2004 email and believe that the increased frequency at the front end is a better option – with some caveats, as compared to those presented. First, any increase in monitoring frequency must be balanced with the additional monitoring that may be required in the very near future by TMDLs that are currently undergoing development and adoption in Ventura County. In other words, any monitoring frequency increases in the conditional waiver program should not duplicate monitoring requirements contained in pending TMDLs.</p> <p>Second, the increased front-end monitoring frequency should last no longer than two years. Within two years of collecting data through the conditional waiver program, the Ventura County agricultural community and the Regional Board will have ample information to properly characterize agricultural discharges in this watershed. Once</p>	<p>The MRP was revised to adjust the monitoring frequency. The monitoring frequency will be structured in two phases. The first phase covers the monitoring conducted during the 2-year period from issuance of the NOA. During the first phase, the frequency of monitoring shall be twice during each dry weather period and twice during each wet weather period. The second phase covers the period from the end of the first phase until the expiration of the waiver. During the second phase, the frequency of the monitoring shall be once during each dry weather period and once during each wet weather period.</p>

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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.			<p>this information has been properly compiled, the agricultural community in coordination with the Regional Board can better determine the parameters that should be monitored for and what is an appropriate frequency, especially in relationship to TMDL monitoring activities.</p> <p>The other options are less desirable for the following reasons:</p> <ul style="list-style-type: none"> <li>• <i>Increased Sampling for a Sub-Set of Parameters</i> – This approach may or may not provide useful information to the agricultural community and the Regional Board. In addition, a primary cost of monitoring is the actual sample collection. Consequently, just decreasing the number of parameters does not greatly decrease the cost of monitoring.</li> <li>• <i>Increased Sampling for dischargers with large “acreage per discharge points”</i> – This approach would be a disincentive to the formation of groups since sampling frequency would increase with the size of the area covered by the program. By discouraging groups, the requirement inadvertently increases the cost of administration for monitoring and for the Regional Board to oversee the program.</li> <li>• <i>Increased Sampling in areas of 303(d) listed pollutants</i> – This approach would only work if the monitoring was targeted specifically to the 303(d) listed pollutants for the receiving water in questions and if the increased monitoring frequency also met TMDL monitoring requirements. Otherwise the requirement becomes duplicative.</li> <li>• <i>Specify Monitoring frequency for different crops</i> – This approach is not practical for group programs as the monitoring is watershed based no commodity based. In addition, many</li> </ul>	

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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			growers in the Ventura County area grow multiple crops of varying types within one year's time. Based on this cultural practice, it would be very difficult to determine what was the appropriate frequency.	
			<p><b>II. MRP Comments</b></p> <p><b>A. End of Property Monitoring</b></p> <p>The MRP has been revised to require the monitoring of discharge points where the discharge leaves the property of a group member before it enters the property of another not enrolled in the group. We are concerned with the logistics of implementing this monitoring scenario in a large group effort. Agriculture in Ventura County is very much a patchwork landscape with many agricultural properties intermixed among urban areas, roads, open spaces, suburban residences and agricultural facilities. Consequently, as described, a group monitoring program could end up with hundreds of small properties that are not directly contiguous to another member's property merely because of the landscape in question. Hundreds of potential monitoring sites devalues the merit of a group program and creates a major disincentive for group monitoring and administration of the conditions. As a result, the waiver then becomes one that in all practicality can only be implemented by individuals. In lieu of this</p>	Staff agree – See revised language in the MRP for Discharger Group

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			<p>approach, we recommend that the Regional Board allow the groups to monitor at representative sites throughout the group area to determine compliance with waiver conditions and to characterize agricultural discharges. Under the waiver program, if a water quality problem is identified, the group is required to prepare a Water Quality Management Plan. As part of this plan, it would be reasonable to require the group to identify where the problem may be coming from within the group area. If the problem appears to come from a non-participating area of the group, the group can point this out in the plan. The Regional Board can then use its enforcement authorities to act accordingly.</p>	
			<p><b>B. Low-Risk Characterization</b></p> <p>Several of the low-risk characterization requirements may not be scientifically and technically feasible. First, there is no scientifically proven correlation between nutrients contained in leaf/plant material and the amount of fertilizer necessary to sustain crop yield. While many farmers do test to assist them in determining their fertilizer needs, there is no adopted or advised correlation between the two requirements at this time. Second, not all pesticide materials are registered for application only through irrigation (e.g. chemigation), and chemigation is not practical for all commodities at all stages of</p>	<p>Staff agree – See revised language</p>

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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			<p>plant growth.</p> <p>It appears based on the other characterizations provided in the draft MRP and resolution, that the main concern is if irrigation return flow or storm water leaves the property. In order to be classified as a low risk discharger, a grower would need to show that irrigation and storm water do not leave the growers property. As such, it appears that the methods of application for fertilizers and pesticides are irrelevant as long as they do not leave the property in question.</p>	
			<p><b>C. Water Quality Management Plan</b></p> <p>Finally, we still remain concerned that several provisions contained in the WQMP are not applicable to agriculture. In particular, the provisions in section D. that refer to a Spill Prevention Plan and storm water control as required under the federal Clean Water Act are not legally applicable to agriculture irrigation return flows or stormwater from agricultural land. Agricultural sources of non point source pollution are not subject to the NPDES provisions of the Clean Water Act. As a result, all regulation of agricultural sources of non point source pollution must be regulated under state law provisions. The federal requirements contained in section D are therefore not relevant in this context. In addition, the requirements regarding preventative</p>	Staff agree – See revised WQMP

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			maintenance, inspections and security more readily apply to treatment facilities, not agricultural BMPs.	
	Newhall Land		Title 22 requirements for Coliform and radionuclides: Newhall Land request that the Regional Board resolve this issue, preferably by deleting the Title 22 requirement, before releasing a public draft of the waiver	Staff appreciates the comment. The issue is under legal review.
			Determination of noncompliance based on monitoring results - requested to be resolved before releasing a public draft of the waiver	Staff appreciates the comment. The issue is under legal review.
			Monitoring frequency and the related cost analysis should be determined - requested to be resolved before releasing a public draft of the waiver	See the revised document
			The tentative Waiver should make clear that group participants may continue to participate in a monitoring group as long as they are participating in required group activities and implementing WQMP components as appropriate	Agree
			The Waiver should not discourage additional voluntary monitoring	Agree
	Valley Crest Tree Company	11/11/04	Regarding Fertilizer Application Volumes Commercial nurseries are not monocultures. Our fertilizer program is dictated by laboratory tests with the intent to provide or supplement those nutrients not available in the soil mix and raw irrigation water and is designed to meet the basic nutritional needs of several hundred varieties of ornamental plants. Soil, leaf and petiole testing to	Agree, non-polluting fertilizer programs would be allowed if they document, through site-specific laboratory tests, that the nutrients added were closely equivalent to those utilized by the plants. This goal can be achieved through many analytical methods, but documentation should be collected and provided demonstrating that fertilizer application is controlled by plant utilization. Variations in the



## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			determine fertilization needs would be very costly since the tests would need to be performed on every variety of plant grown, and still may not result in being able to grow a marketable product since our customers will not accept a tree that is even slightly "off-color".	approach for marketing concerns should be expressed clearly in the application and will be considered by the Executive Officer.
			<p><b>Pesticide Application</b></p> <p>Why are foliar and soil applied pesticides excluded and the limitation is application through irrigation systems only?</p> <p>Integrated Pest Management guidelines are being followed and pesticide use recommendations are written and supervised by individuals licensed by the California Department of Pesticide Regulation. Most of the materials labeled for ornamental use are for foliar and soil applications. It is all but impossible to comply with the California Agricultural Code regulations requiring nurseries to produce a "commercially clean" product and making it impossible to comply with various California Department of Food and Agriculture quarantine requirements without the ability to make foliar applications of pesticides, this in turn affects our ability to sell product and directly affects the profitability of our business.</p> <p>Also using the irrigation system to make pesticide application would require nurseries to group like plants together eliminating two IPM practices, 1) having dissimilar plants grouped in order to stop or slow the spread of pest insects and diseases and 2) having the ability to</p>	<p>Agree, several pesticide application methods are consistent with water quality protection in addition to foliar and soil application.</p> <p>Demonstration that Integrated Pest Management methods are followed can be sufficient to meet this requirement. Spot treatment or local variations from the IPM plan may not be consistent with conservative application methods and should be well documented with water quality impacts measured.</p>

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

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			make spot treatments rather than having to treat potentially large number of acres to control a pest.	
			Soil Floors Please define soil floors. Does a nursery with graveled bays and roads fall under the definition of soil floors? Gravel is present to keep silt runoff at a minimum.	Yes, the designation ' soil floor' means a permeable base for the operation, such that percolation to the groundwater could occur.
			Geographic Boundaries How large an area is considered a geographic area? Please define close proximity limitations.	Few limitations are put on group definitions, however proximity on a tributary or in an area of common drainage would be desirable. Please define your group and describe why it is supportive of water quality for the group to work together. The Executive Officer will review.
			Discharge Groups Can a commercial nursery surrounded by citrus and avocado farms be a part of the same discharge group?	Dischargers can join with others at proximal locations or with similar crops.
			50 Foot Setback Please define “a buffer strip” and where the wetlands start in relation to farmed land?	The National Resource Conservation District has produced descriptions of most management practices for the EQUIP program and additional detail is available through their office.
			Discharge Prohibitions “... any substance in concentrations toxic...” What is the indicator species that is going to be used to determine toxicity?	Common species of goldfish and minnows are often used. The species would be determined by the laboratory making the analysis and the US EPA quality control guidance for that laboratory.
			Educational Requirements Do C DPR, CCA, ISA, PAPA, CAPCA, etc. continuing education	After adoption, the Executive officer will designate or offer specific training, some of which may be developed by the State. Other classes

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			hours count toward the required 8 hours?	are likely to apply if they provide growers with tools to protect water quality. However, if a class has not be preapproved, the discharger should provide evidence demonstrating that the class will meet the educational requirements.
	Western Growers	11/12/04	<p>The draft waiver should be revised to required that agricultural runoff must be determined to cause or contribute to exceedances of applicable receiving water limitations before noncompliance is determine to occur.</p> <p>We recommend that the LARWQCB resolve this issue before public release of the Draft Waiver. We suggest the following language be added to Waiver section I. Compliance and Enforcement to limit appropriately the conditions under which a determination of noncompliance would be made:</p> <p>“When an exceedance of an applicable receiving water limitation is detected through monitoring or other means, a discharger shall not be held to be out of compliance with the Waiver’s conditions unless the LARWQCB makes a finding that the discharger’s agricultural runoff has caused or contributed to the exceedance. A finding that a discharger’s agricultural runoff has caused or contributed to a water quality standard exceedance, in violation of the Waiver’s conditions, shall be determined using a weight of the evidence standard.”</p>	<p>The language in the Conditional Waiver specifies the discharger’s responsibility and how implementation and compliance should be done in the term of the Conditional Waiver. The waiver is being issued under Water Code section 13269, which requires the Regional Board to determine, among other things, that the discharge will be consistent with any applicable state or regional water quality control plan (i.e., with the Basin Plan). As a result, the Regional Board has fairly broad discretion in determining what it means to be</p>

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
				“consistent.” Establishing triggers based on comparing monitoring data with receiving water limitations (i.e., applicable water quality standards) provides the necessary information for the Regional Board to make the required demonstration that the irrigated lands regulated by the conditional waiver are discharging consistent with the Basin Plan. The propose provision is not necessary.
			<p>The Draft Waiver should eliminate application of Title 22 requirements to agricultural discharges</p> <p>Item G.5 and G.9 should be deleted from the Draft Waiver, and item G.5 should be revised as follows:</p> <p>“There shall be no individual or combination of pesticides present in the concentrations that adversely affect beneficial uses”</p> <p>Again, we encourage the LARWQCB to resolve this issue before public release of the Draft Waiver.</p>	<p>Staff appreciates the comment on Title 22. The use of the Title 22 numbers for MUN-designated waters is appropriate and reflects a water quality objective that the discharges must meet in order to comply with the Porter-Cologne Water Quality Control Act.</p> <p>Moreover, because the waiver involves discharges from irrigated land there is a serious potential for these constituents to be present in the discharge. Culling pesticides out for an explicit limitation is necessary and appropriate in light of the explicit statutory requirements for waivers to be in the public interest and that the waiver is consistent with the Basin Plan.</p> <p>Pesticide water quality objectives are well defined. Satisfying beneficial uses is only part of those requirements.</p>
			Monitoring frequencies as proposed in the current third Draft Waiver	Cost analyses will be developed as a part of any new monitoring

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

No	Commentator	Date	Comment*	Response
			<p>are fair, appropriately protective of water quality, and ensure that compliance costs are comparable to the other Regions' Agricultural Waiver Programs</p> <p>We also note that the cost analysis provided in the third Draft Waiver documents is only preliminary. We request that should the LARWQCB decided to modify monitoring requirements, it should offer another pre-public draft of the waiver that takes into account comments on these recent monitoring frequency proposals and includes a complete cost assessment before releasing the Draft Waiver for public review and comment.</p>	<p>requirements as per the guidance of the California Water Quality Control Act (Porter Cologne).</p>
			<p>Group participants should continue to be eligible for coverage under a group monitoring plan as long as they are complying with monitoring, reporting, documentation, and BMP implementation requirements.</p> <p>Waiver section A.10 should be revised as follows:</p> <p>The Discharger Group shall not be responsible or liable for individual compliance with the terms of the waiver or the Water Code in general. The Discharger Group shall only be responsible for conveying information related to an individual's participation in the Group, not for determining if the individual is in compliance with the term of the Waiver. An individual's participation in the Group will not be terminated based solely on a determination that the individual is causing or contributing to a water quality exceedance. Individual</p>	<p>Staff disagrees. If Individual Discharger or participant of a Discharger Group fails to meet the requirements and conditions of this Waiver such as causing water quality exceedance and not in compliance with the conditions of this Conditional Waiver, the Executive Officer may terminate the Conditional Waiver and issue Waste Discharge Requirements for that individual discharger. Please see the revised Conditional Waiver, Compliance and Enforcement section</p>

# Tentative Conditional Waiver for Discharges from Irrigated Lands

## Responsiveness Summary: General Comments

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			<p>Dischargers' continued coverage under the group is based on Individual Dischargers' compliance with participation in the monitoring provisions, as approved by the Executive Officer, maintenance of records are required by the waiver's conditions, and implementation, as appropriate, of the group's WQMP.</p> <p>Termination of coverage will occur on the date specified in the NOT, unless specified otherwise."</p>	
			<p>The Draft Waiver continues to inappropriately apply receiving water standard to individual Dischargers' runoff</p> <p>We recommend the following revisions to the Finding 22 of the Waiver: "The monitoring program required by Resolutions XXX and XXX satisfy section 13269 of the California Water Code. Under Resolution XXX, individuals subject to this Resolution will not monitor the nearest receiving water toward which the discharge flows. Only if an exceedance is detected in the receiving water shall the individual discharger be required to monitor irrigation return flows and storm water runoff as it leaves the individual's property. Under Resolution XXX, groups will monitor receiving waters."</p> <p>Waiver section G.1 should be revised to clarify that receiving water limitations apply only to receiving waters: "Receiving water, for purpose of the waiver of WDR for irrigated lands, shall be defined as</p>	<p>Staff appreciates the comment. Individual Discharger and Discharger Group subject to this Resolution that do not discharge directly to a receiving water listed on Appendix 2 of the MRPs, Nos. CI-8835 and CI-8836 will monitor irrigation return flows and stormwater runoff as it leaves the individual's property. Under MRPs Nos. CI-8835 and CI-8836, Discharger Groups and Individual Dischargers subject to this Resolution that discharge directly to a receiving water listed on Appendix 2 of the MRPs, Nos. CI-8835 and CI-8836 will monitor receiving waters. If results from the monitoring programs indicate that water quality objectives are exceeded, the individual or group will be required to submit a WQMP. Additionally, if results from the group monitoring program indicate that water quality objectives are exceeded within an area monitored by a group, the Executive Officer may require additional discharge monitoring within the area covered by group monitoring program. See revised Conditional Waiver for</p>

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			surface water designated as 'water of the State' that receive discharges from irrigated land and/or groundwater. Compliance with receiving water limitation shall be determined using sampling of the surface water at the receiving water monitoring discharge sites as approved by the Executive Officer.	details
			<p>Additional suggested revisions to incorporate the principles of the State NPS program and emphasize a BMP-based approach into the Draft Waiver</p> <p>We suggest the following revisions to the language of the Draft Waiver :</p> <p>Page 3, item 13. the intent of this Conditional Waiver is to regulate discharges from irrigated lands to ensure that such discharges are not causing or contributing to exceedances of a Regional, State, or Federal numeric or narrative water quality standard, in a manner consistent with the second tier process of implementing the State NPS Program Plan</p> <p>Page 4, item 18. The conditions of the waiver shall include, but need not be limited to, development and implementation of management practices designed to control discharge of identified pollutants of concern from irrigated agricultural operations that may be causing</p>	Staff appreciates the comment.

# Tentative Conditional Waiver for Discharges from Irrigated Lands

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			nuisance or contributing to exceedances of applicable water quality objectives and the performance of individual or group monitoring. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including but not limited to, assuring that such management practices are properly implemented and applied and ...	
	Bordier's Nursery, Inc. (George Gutman)	11/16/04	Some nursery operations have chosen to implement surface water (irrigation water) runoff. These systems are very effective in containing and reusing the irrigation water under control of the operator. The fact that almost all of this potential runoff is reused over and over inherently increases the salinity. Although the total loading of nutrients and others constituents is vastly reduced in total, individual discharges (typically relatively small volume) can have concentrated constituents. This higher salinity complicates any acute or chronic toxicity testing especially where non-salt tolerant test organisms are used. The cost to construct and maintain these system is huge. The board should take this into consideration in designing any specific regulations or measuring and monitoring requirement for operations employing these systems as part of their mitigation plans. To "disincent" the use of these systems would be to the overall degradation of the watershed	Staff agrees that surface water containment systems are the state of the art method for controlling nursery runoff. It is expected that if they are functioning properly, with discharge only during storms, monitoring data should confirm that they substantially reduce the contaminants leaving the property. If they do not, then additional management measures would be proposed by the grower and the definition of ' state of the art' will change.
			I would like to see a more detailed measuring and Monitoring	Agree, see model QAPP plan in the waiver for this information.



## Tentative Conditional Waiver for Discharges from Irrigated Lands

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			Reporting protocol with specific EPA protocol listed with minimum detection levels for each constituent of interest. This helps when selecting a laboratory to do the testing	
			I noticed in the Initial Study an quote stating that “discharge is a privilege, not a right” I believe we have a right to allow natural historical discharge to leave the property as long as it meets water quality standards. Therefore the volume of discharge would not be regulated	Agree, this conditional waiver only monitors discharge volume. Storm water runoff is only considered a discharge if its quality is altered.
			The board should be careful in regulating pesticide use and application since this is not within their jurisdiction. The mention of only growing low pesticide maintenance crops is out of the question for most commercial nursery growers. Customer demand and California nursery law require “pest free” stock. The board like several other regional boards will have to walk a fine line between their goals and other state and federal agencies mandates.	Agree. The waiver addresses pesticide content in water and makes the assumption that where water quality problems occur, changes in practices can rectify it.
			I do like the provision of reviewing the MRP&R on a regular basic. The accumulation of data will direct the addition as well as elimination of some of these parameters as it has in other watershed	Staff appreciates the comment
			I would like to draw attention to the cost of doing the water quality testing. The amount quoted to me seems very understated (\$4000/yr). The acute and chronic toxicity testing runs in the \$2,500 range/test. If this is not tied to a “real” measure of impairment it is a waste of time	Staff agrees that monitoring can be expensive. In response, several options have been provided to defray costs, including group formation and ' low risk' categories.

## Tentative Conditional Waiver for Discharges from Irrigated Lands

### Responsiveness Summary: General Comments

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			and money. Literature citation is not real life. TIE studies just will not work especially in the beginning of this kind of program.	
			There needs to be more modeling of the watershed. Flow data and baseline impairment levels at points in time as well as cumulative effects need to be accounted for. The eutrophic organism need to be identified and their biological parameters assessed (N or P limited). This makes any constituent contribution more relevant to actual impairment. This could lead to seasonal TMDL levels or the modification of original numeric targets	Agree. Monitoring results could result in additional impairments and TMDLs with modeling requirements.
	Newhall Land	12/23/04	Assure that the language of the draft Waiver consistently states the Board's intent to utilize management practices to achieve water quality objective, as opposed to imposing numeric water quality standards on nonpoint source discharges and requiring agricultural operators to meet such standards.	Staff agree – See revised language
			Establish narrative and numeric monitoring standards that can be met through the implementation of management practices.	Staff agree and the monitoring standards are set based on the narrative and numeric targets list in the Basin Plan.
			With respect to standards for determination of Low-Risk Discharger status, we would ask that the Regional Board consider revising the Low-Risk Discharger factors regarding irrigation runoff and sediment. For example, it is not feasible or practicable to prevent all sediment from leaving even natural open spaces during larger storm event. Therefore, a standard requiring zero transport of sediment	Staff appreciates the comment. The language was changed as follow:  ‘S ediment is kept on site including during storm conditions, and retained by filter strips, buffer zones, retention basins, or other management practices.’

## Tentative Conditional Waiver for Discharges from Irrigated Lands

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			<p>offsite during storm events would appear to be unreasonable. We would request the Board revise the language as follows:</p> <p>‘Sediment transport off the property, including during storm conditions, but is effectively controlled by measures such as filter strips, buffer zones, retention basin, or other management practices.’</p>	
			Assure that triggers for additional monitoring, toxicity identification evaluations, and WQMPs take into account the source of pollutants contributed to receiving waters.	Staff appreciates the comment. The issue is under legal review.
			Do not mandate that agricultural operators submit results of monitoring done more frequently than required under the draft Waiver	Staff disagree, Section III.C.2 only require the discharger to submit the monitoring results to the Regional Board if the discharger monitors any constituent more frequently than required by the Conditional Waiver.
			Do not impose unnecessary requirements	Staff disagree and found that it is necessary to have the annual report clearly state by the discharger that there is no discharge during reporting period.
	Western Growers	12/23/04	The ‘Cause and Contribute’ Standard	Staff agrees that growers are not at fault for water quality problems created by upstream users. However, they are responsible for demonstrating the extent of the problem in the water they receive and ensuring the effectiveness of management measures..
			Nonpoint Source Pollution Control, Numeric Standards, and Water Quality Control of Agricultural Discharges Over the Term of the Waiver	These recommendations are under legal review and may be utilized if they are consistent with regulatory requirements. In one case, the proposed use of the term benchmark, the Regional Board retains the

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				responsibility to maintain water quality standards in its waterways at all times and cannot legally remove that requirement through specific language or inference. The Conditional Waiver was revised to include the updated Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program dated May 2004. See revised Conditional Waiver, Finding 15.
			The Waiver Should Include Appropriate, Attainable Monitoring Standards	Same as above
			The Waiver Should Reflect a Focus on Results	Staff agree